

REMARKS

1. Status of the Claims

Claims 1-2, 4-11, and 13-18 are currently pending. Applicant has deleted Claim 2, substantively amended Claim 1, and has amended Claims 4-11 and 13-18 to better clarify the invention, and put the claims in more appropriate U.S. format.

Additionally, Applicant has added new claims 19 to 62, of which Claims 19, 34 and 49 are in independent form. Each of the independent claims corresponds to former Claim 1, in combination with one or more of the prior dependent claims.

As filed, the original application included fourteen (14) total claims, of which one (1) was in independent form. The original filing fee was sufficient for twenty (20) total claims, of which three (3) could be in independent form. The above amendments add a total of forty-two (42) claims over twenty, and one (1) independent claim over three. As such, Applicant includes herein a check for \$421.00 to cover the additional claims.

2. Claim Rejections under 35 U.S.C. §112

The Examiner has rejected Claim 18 under 35 U.S.C. §112, based on the contention that it is indefinite. Applicant has amended Claim 18 so as to better clarify the invention. Therefore, Applicant submits that the Examiner's rejection under §112 has now been overcome.

3. Claim Rejections under 35 U.S.C. §102

Substantively, the Examiner has rejected Claims 1, 2, 4 and 15 under 35 U.S.C. §102(b), based on the contention that they are anticipated by U.S. Patent No. 5,120,325, issued to Dow Jr. (Dow '325). Applicant respectfully traverses the Examiner's rejection.

Notwithstanding the traversal, and as noted above, Claim 2 has been deleted, and Claim 1 has been amended to better clarify the invention. Additionally, Claims 19, 34 and 49 have also been added to specify particular embodiments of the present invention. These independent claims are not taught, disclosed or suggested by Dow '325, either alone or in combination with other prior art references.

Dow '325 discloses a sterile bandage suitable for external application to a wound or injury having a backing layer on which a non-toxic pigmented composition is coated or embedded. The pigmented composition has a melanin likeness in appearance such that it substantially matches the appearance of human skin. (Dow '325, Abstract). The backing may be “perforated to make it porous and breathable.” (Dow '325, Col. 2, Lines 43-44).

In rejecting the present claims, the Examiner contends that “porous and breathable” is equivalent to hydrophobic. Applicant respectfully disagrees. Porous and breathable denotes a backing material that allows water to permeate through. Hydrophilic, on the other hand, means a material that has an affinity for water. In other words, water is actually drawn to and retained near a hydrophilic material, while a porous material simply allows the water to pass through.

The presently claimed invention in Claims 1, 19, 34 and 49, claims a surface treatment or surface coating that is either lipophilic or hydrophilic, and not a porous surface. The use of a lipophilic or hydrophilic surface treatment or coating enables a user to apply a lipid-based or hydro-based makeup directly to the surface of the present invention, and to ensure that the makeup will maintain its position. Additionally, by not pre-impregnating the backing with makeup, a user can utilize any number of makeup

types, brands, or colors.

Dow '325 has no teachings or suggestions relative to this possibility. Instead, Dow '325 teaches coating or embedding the pigment onto the backing itself prior to application. There is no teaching or suggestion of a hydrophilic or lipophilic coating in Dow '325 at all. Furthermore, one of ordinary skill in the art would never incorporate such a coating into the structure of Dow '325, as to do so would be completely unnecessary; the backing is pre-impregnated with the pigment, and no further pigment is applied.

Based on the above, Applicant submits that the present invention is not disclosed in Dow '325, and Applicant respectfully requests withdrawal of the Examiner's rejection.

4. Claim Rejections under 35 U.S.C. §103

The Examiner has additionally rejected Claims 5-10 and 16-18 under 35 U.S.C. §103(a), based on the contention that they are unpatentable over Dow '325, either alone or in combination with a number of other prior art references. Applicant, again, respectfully traverses the Examiner's rejections. Given that all of the rejected claims depend from Claim 1, however, and given that Claim 1 is now in allowable condition as noted above, Applicant submits that the Examiner's rejections are now moot. Therefore, withdrawal of the rejections under §103 is respectfully requested.

5. Conclusion

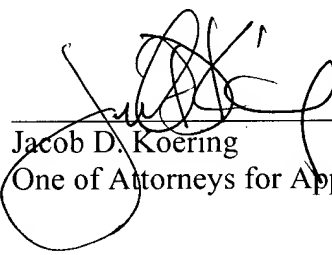
Based on the above, Applicant submits that Claims 1, 4-11 and 13-18 should now be in condition for allowance. Furthermore, Applicant submits that, for the same reasons, Claims 19-62 are also now in condition for allowance. Therefore, reconsideration and passage to allowance of Claims 1, 4-11, and 13-62 is respectfully requested.

Should anything further be required, a telephone call to the undersigned, at (312) 226-1818, is respectfully invited.

Respectfully submitted,

FACTOR & LAKE, LTD.

Dated: January 22, 2004



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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 22, 2004.

Jacob D. Koering

